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January 3, 2003

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Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**RE: Notice of *Ex Parte* Presentation, GN Docket No. 00-185, CS
Docket No. 02-52**

Dear Madame Secretary:

On January 3, 2003, representatives of the Alliance of Local Organizations Against Preemption ("ALOAP") met with the staff of the Media Bureau and met separately with Jordan Goldstein, Legal Advisor to Commissioner Copps in the above captioned proceeding. Attending the meeting on behalf of ALOAP were: Nicholas Miller & Mitsuko Herrera of Miller & Van Eaton. Attending the meeting on behalf of the FCC Media Bureau were:

- Barbara Esbin, Associate Chief
- Marjorie Reed Greene, Associate Chief
- Mary Beth Murphy, Chief, Policy Division
- John Norton, Deputy Chief, Policy Division
- Kyle Dixon, Deputy Bureau Chief and Special Counsel to the Chairman for Broadband
- Peter Corea, Attorney Advisor, Policy Division
- John Kiefer, Engineering Division
- Alison Greenwald, Engineering Division

As summarized in the attached talking points, the parties discussed: the non-Title VI sources of local franchising authority to require franchise fees for use of the public rights-of-way

List of Conferences
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to provide cable modem service; the authority of local franchising authorities under Title VI to require cable modem service providers to comply with local customer service standards; the significant and additional burden placed on the public rights-of-way by the provision of cable modem service; and the implications and limitations of the Commission's tentative decision to classify cable modem service as a Title I information service, and not as a service ancillary to Title II or Title IV services. In addition, the parties discussed: local authority to broadly enforce state consumer protection and anti-fraud provisions; general state property law doctrine as it relates to use of the public rights-of-way; authority of local governments under federal law, state law and home rule doctrines to require compensation and franchises for use of the public rights-of-way by non-cable, non-telecommunications service providers; and the applicability of constitutional and state contract law to existing cable franchise agreement contracts.

Sincerely,

MILLER & VAN EATON, P.L.L.C.



By

Mitsuko R. Herrera

cc w/o attachments: Barbara Esbin, Associate Chief
Marjorie Reed Greene, Associate Chief
Mary Beth Murphy, Chief, Policy Division
John Norton, Deputy Chief, Policy Division
Kyle Dixon, Deputy Bureau Chief and Special Counsel to the Chairman
for Broadband
Peter Corea, Attorney Advisor, Policy Division
John Kiefer, Engineering Division
Alison Greenwald, Engineering Division

**DOCUMENT AVAILABLE
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DOCKET/RULEMAKING**

SEE DOCKET NO. *02-52* FOR THE DOCUMENT